UNITED STATES
v.
ROBERT CHAMBERS

IBLA 80-31 Decided April 23, 1980

Appeal from a decision of Administrative Law Judge E. Kendall Clarke holding null and void the Reno, Lasy Dutchess (a.k.a. Lasy Deutshess), Ritzy Susan (a.k.a. Ritsy Susan), Big Sky, and Longshot lode mining claims and the Las Vegas Mill Site. OR-17970, OR-17971, OR-17972, OR-17973, OR-17974, OR-17978.

Affirmed.

1. Administrative Procedure: Burden of Proof -- Mining Claims: Discovery: Generally

   Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

2. Administrative Procedure: Burden of Proof -- Mining Claims: Contests -- Mining Claims: Discovery: Generally

   When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's workings.

3. Mining Claims: Discovery: Generally -- Mining Claims: Lode Claims

   To constitute a discovery on a lode mining claim there must be physically exposed

within the limits of the claim a lode or vein bearing mineral of such quality and in such quantity as to warrant a man of ordinary prudence in the expenditure of his labor and means, with a reasonable prospect of success, in attempting to develop a valuable mine; it is not enough to show that the exposed mineralization is sufficient to warrant holding a claim with a reasonable hope that at some time in the future the land embraced therein may become valuable for mining.

4. Mining Claims: Discovery: Generally -- Mining Claims: Discovery: Geologic Inference

While geologic inference based upon knowledge of the degree of mineralization prevalent within the surrounding area cannot substitute for the actual exposure of a vein or lode within a claim, it may be relied upon as an aid to calculate the extent and potential value of the mineral deposit, once a vein or lode bearing minable material has been exposed. To establish the existence of a valuable mineral deposit on a lode claim, there must be evidence of continuous mineralization along the course of the vein or lode; the mere showing of disconnected pods of mineral concentration, even of high values, does not satisfy the test.

5. Millsites: Determination of Validity

After the contestant has made a prima facie case of invalidity, the millsite claimant has the burden of establishing the validity of his claim by a preponderance of the evidence. Where a millsite is not presently used or occupied, the factors to be taken into account are (1) the condition of the mill; (2) potential sources of lode or placer material to be run through the mill; (3) marketing conditions; (4) cost of operation including labor and transportation; and (5) all factors that have a bearing upon the economic feasibility of a milling operation being conducted.

APPEARANCES: William B. Murray, Esq., Portland, Oregon, for contestee; Elden M. Gish, Esq., U.S. Department of Agriculture, Portland, Oregon, for contestant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Robert Chambers appeals from a decision of Administrative Law Judge E. Kendall Clarke holding null and void the Reno, Lasy Dutchess (a.k.a. Lasy Deutshess), Ritzy Susan (a.k.a. Ritsy Susan), Big Sky, and Longshot lode mining claims and the Las Vegas Mill Site. Robert Chambers is the successor in interest to Scott Lofts, deceased, one of three contestees named in the Government contest of the above claims. 1/

Contest complaints against each of the above claims were filed by the Bureau of Land Management (BLM) on January 19, 1978, at the request of the United States Forest Service. Each complaint against the various lode claims charged that "[m]inerals have not been found within the limits of the claim in sufficient quantities to constitute a valid discovery." With respect to the Las Vegas Mill Site, BLM charged that "[t]he Las Vegas Mill Site is not being used for mining and milling purposes."

A hearing was held before Judge Clarke on May 16, 1978, at which contestee, Scott Lofts, was absent. 2/ Thereafter on June 14, 1978, the deposition of Mr. Lofts was taken in the presence of counsel for the contestant and contestee. A decision was rendered on September 6, 1979, by Judge Clarke holding that contestee had failed to present evidence which overcame the Government's prima facie case. Accordingly, each of the above claims was declared null and void. From this decision, Robert Chambers appeals.

1/ Mr. Lofts was the sole contestee in OR-17970 (Reno), OR-17971 (Lasy Dutchess), OR-17972 (Ritzy Susan), OR-17973 (Big Sky), OR-17974 (Las Vegas Mill Site), and OR-17977 (Longshot #2). No appeal is taken by the Government to Judge Clarke's dismissal of the contest of the Longshot #2 for failure to establish a prima facie case. In contests OR-17975 and OR-17976 (Valhalla #1 and Valhalla #2 lode mining claims), Donald Lee Roberts was named as a contestee with Mr. Lofts. No appeal is taken from Judge Clarke's decision invalidating the Valhalla #1 and Valhalla #2. Contestee Lofts claims to have sold his interest in each of the Valhalla claims prior to issuance of the contest complaint. Martin F. Rowley and Scott Lofts were contestees in OR-17978 (Longshot). Each of the claims before Judge Clarke is located in T. 8 S., R. 4 E., Willamette meridian, Marion County, Oregon.

2/ Counsel for Mr. Lofts was present and cross-examination of the Government's witness took place. Neither Donald Lee Roberts nor Martin F. Rowley was present.

The Government's evidence consisted of the testimony of Zean R. Moore, a qualified mining engineer employed by the United States Forest Service. Mr. Moore testified that he walked over each claim and took samples from the Reno and Longshot lode mining claims. He did not take samples from the Lasy Dutchess, Ritzy Susan, or Big Sky claims, because he said he did not see anything which would warrant taking samples. He further testified that Mr. Lofts informed him that there were no discovery points on any of these latter three claims (Tr. 21). In Moore's opinion, no discovery of a valuable mineral existed on the Lasy Dutchess, Ritzy Susan, or Big Sky claims from which a paying mine could be developed. Id.

Appellant presented no assays showing mineralization on any of these three claims, but did opine that a prudent man would be justified in developing the claims with a reasonable prospect of making paying mines out of them (Dep. Tr. 11-12).

Moore did sample the Reno and Longshot claims, however. His sample from the Reno was a grab sample taken from a dump, because a portal to what he believed was an adit on the Reno had been caved. The assay of this sample showed .1 ounce per ton of silver, an amount which Moore termed insignificant. Appellant offered two assays of the Reno, one showing .5 ounce per ton of silver, the other showing .03 ounce per ton of silver and 110 parts per million (ppm) of copper, inter alia.

The Longshot claim has produced appellant's best assays. A Government assay showed the presence of silver, lead, copper (1.19 percent), and zinc with a combined value of $42.98 per ton. On cross-examination, witness Moore conceded that copper values of 1.19 percent would be significant if a large tonnage "in the millions of tons" could be located. Appellant presented five assays for the Longshot, the best of which showed copper (9.75 percent), lead (6.95 percent), and zinc (1.4 percent). Another showed silver present at 2.66 ounces per ton. No dollar amount was attached to these samples, and appellant did not present evidence of the costs of extraction, removal, and marketing such minerals. Other samples from the Longshot offered by appellant produced assays considerably below the aforementioned values. Four of appellant's five assays were determined by atomic absorption, a method which counsel for contestant has characterized as suspect in the absence of details of the test. Donald Decker, a geologist for Freeport Mining Co., who performed appellant's assays, did not appear at the hearing or at the subsequent deposition.

While acknowledging that a core drill is necessary to determine how much tonnage is present on the Longshot, appellant estimated indicated reserves at 200,000 tons and inferred reserves at 800,000 tons (Dep. Tr. 40-41). Appellant points to the mining activity in the area adjacent to the Longshot by Freeport Mining Co. and AMMACO as evidence that a prudent man would be justified in expending his labor and means in the development of this claim. An unsigned

purchase schedule published by ASARCO was offered by appellant as evidence of a market for the minerals from his claims.

With respect to the Las Vegas Mill Site, witness Moore testified that a small impact mill was present on the millsite in August of 1975, but has been subsequently removed. He further testified that the terrain presented a poor site for a mill (Tr. 17). Appellant suggested that the impact mill was removed to avoid damage by vandals.

[1] In his statement of reasons on appeal, appellant makes three arguments, the first of which charges that the contestant failed to make a prima facie case as to each claim. It is well settled that a prima facie case is established by the United States when a Government mineral examiner testifies that he has examined a claim and can find no evidence of a discovery of a valuable mineral deposit. United States v. Harder, 42 IBLA 206 (1979); United States v. McClurg, 31 IBLA 8 (1977); United States v. Reynders, 26 IBLA 131 (1976).

[2] When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made. United States v. Becker, 33 IBLA 301 (1978).

The Government's witness, Zean R. Moore, testified that he walked over the Lasy Dutchess, Ritzy Susan, and Big Sky claims and found no points of discovery worth sampling. Appellant Lofts had informed Moore that no discovery points in fact existed on these claims. Clearly, the Government has made its prima facie case here. Appellant's subsequent failure to offer assays of these claims refutes appellant's second contention on appeal that it has preponderated on the discovery issue. Government mineral examiners are not required to perform discovery for claimants, nor to explore beyond a claimant's workings. United States v. Harder, supra; United States v. Bechthold, 25 IBLA 27 (1976).

[3] To constitute a discovery on a lode mining claim there must be physically exposed within the limits of the claim a lode or vein bearing mineral of such quality and in such quantity as to warrant a man of ordinary prudence in the expenditure of his labor and means, with a reasonable prospect of success, in attempting to develop a valuable mine; it is not enough to show that the exposed mineralization is sufficient to warrant holding a claim with a reasonable hope that at some time in the future the land embraced therein may become valuable for mining.

With respect to the Reno claim, appellant's assays, while higher than the Government's single assay, did not establish sufficient mineralization to justify a prudent man in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Castle v. Womble, 19 L.D. 455, 457 (1894). Judge Clarke's decision invalidating the Reno was a correct one.

[4] The Longshot poses a closer question. A single assay taken by the Government showed copper present at 1.19 percent and a total sample value of $42.98 per ton. A still higher assay, determined by atomic absorption, was offered by appellant indicating the presence of copper (9.75 percent), lead (6.95 percent), and zinc (1.4 percent). The statement by Government witness Moore that copper values of 1.19 percent would be significant if present in "millions of tons" poses the question whether such values exist in sufficient quantities to constitute discovery. 3/ While geologic inference based upon knowledge of the degree of mineralization prevalent within the surrounding area cannot substitute for the actual exposure of a vein or lode within a claim, it may be relied upon as an aid to calculate the extent and potential value of the mineral deposit, once a continuous vein or lode bearing minable material has been exposed. United States v. Arizona Mining and Refining Co., Inc., 27 IBLA 99, 105 (1976); United States v. Larson, 9 IBLA 247, 262 (1973).

Before geologic inference may be used to project the value of a mineral deposit on the Longshot, it is proper to ask whether there exists a vein or lode bearing minable material to justify any inferences at all. Half of the assays offered into evidence (five by contestee, one by contestant) reveal values which clearly no prudent man would pursue. To establish the existence of a valuable mineral deposit on a lode claim there must be evidence of continuous mineralization along the course of a vein or lode; the mere showing of disconnected pods of mineral concentration, even of high values, does not satisfy the test. United States v. Arizona Mining and Refining Co., supra at 105. Although appellant claims that there does exist a lode or vein extending through the Longshot and Reno north to the boundary of the adjoining mine and said vein is flagged so as to be readily followed on the ground, appellant's assays are the best evidence of the continuity of such vein, but fall short of establishing it. We agree with Judge Clarke that appellant has not shown continuous mineralization to establish the existence of a valuable mineral deposit. In the absence of continuous mineralization, geologic inferences into the quantity of mineral on the Longshot are premature.

[5] Appellant's third argument on appeal is the charge that Judge Clarke erred in invalidating the Las Vegas Mill Site. At the deposition, appellant testified that he had spent $4,000 on a small

3/ Counsel for contestee points out that the contest complaint charged that minerals have not been found in sufficient quantities to constitute a valid discovery. However, the issue of the quality of mineralization was addressed by both contestant and contestee in offering various assays into evidence. Such evidence is admissible where the parties, by express consent or by the introduction of evidence without objection, amend the pleadings at will.

impact mill and such mill had been in use in 1977. Previously, Government witness Moore had testified to the mill being on site during a 1975 visit and absent therefrom during a subsequent visit. Moore also testified that the site was a poor one for a mill.

Where a millsite is not being used for mining or milling purposes in connection with a mining claim owned by the owner of the millsite, and at the time of contest there is no quartz mill or reduction works on the site, the millsite must be declared null and void. United States v. Highley, 30 IBLA 21 (1977).

United States v. Cuneo, 15 IBLA 304 (1974), requires that after the contestant has made a prima facie case of invalidity, the millsite claimant has the burden of establishing the validity of his claim by a preponderance of the evidence. Where a millsite is not presently used or occupied, the factors to be taken into account are (1) the condition of the mill; (2) potential sources of lode or placer material to be run through the mill; (3) marketing conditions; (4) cost of operation including labor and transportation; and (5) all factors that have a bearing upon the economic feasibility of a milling operation being conducted.

In light of the Cuneo standards we agree with Judge Clarke that appellant has failed to preponderate over the evidence presented by the Government with respect to the Las Vegas Mill Site.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of Administrative Law Judge Clarke is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge